

the case shall be forwarded to the Commissioner of Customs for disposition.

(4) In the case of an entry summary which has not been filed, the Fines, Penalty, and Forfeiture Officer may not grant relief from a demand for liquidated damages until the entry summary has been filed.

(e) *Failure to timely deliver merchandise traveling in-bond.* (1) If merchandise traveling under bond is not delivered to the port of destination or exportation within time limits established by §§ 18.2(c)(2), 122.119(b) or 122.120(c) of this chapter and liquidated damages are assessed for violation of the provisions of § 18.8(b) of this chapter, notwithstanding other delegations of authority, the demand shall be cancelled by the port director in accordance with guidelines issued by the Commissioner of Customs.

(2) If the in-bond manifest is not delivered to the port director as required by § 18.2(d) or § 18.7(a) of this chapter and liquidated damages are assessed for violation of the provisions of § 18.8(b) of this chapter, notwithstanding any other delegation of authority, the demand shall be cancelled by the port director in accordance with guidelines issued by the Commissioner of Customs.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 75-229, 40 FR 43026, Sept. 18, 1975; T.D. 77-27, 42 FR 3162, Jan. 17, 1977; T.D. 79-221, 44 FR 46830, Aug. 9, 1979; T.D. 84-209, 49 FR 39050, Oct. 3, 1984; T.D. 84-213, 49 FR 41186, Oct. 19, 1984; T.D. 85-39, 50 FR 9612, Mar. 11, 1985; T.D. 85-167, 50 FR 40363, Oct. 3, 1985; T.D. 91-71, 56 FR 40780, Aug. 16, 1991; 56 FR 48823, Sept. 26, 1991]

#### **§ 172.23 Limitations on consideration of petitions.**

No action looking to relief from the payment of full liquidated damages shall be taken on any petition, irrespective of the amount involved, if the claim has been referred to the Department of Justice for collection as provided in § 172.2.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 87-51, 52 FR 12152, Apr. 15, 1987]

### **Subpart D—Disposition of Petitions**

#### **§ 172.31 Act or omission did not occur.**

(a) *Definite.* If it is definitely determined that the act or omission forming the basis for a claim for liquidated damages did not in fact occur, the claim shall be cancelled by the Fines, Penalty, and Forfeiture Officer. If the liquidated damages have already been paid, they shall be refunded by Customs, and an appropriate notation shall be made on Customs Form 5955-A, if the transaction has already been recorded thereon.

(b) *Dependent upon a construction of law.* When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling decisive of the issue.

(c) *Doubtful cases.* Approval of the Commissioner of Customs shall be requested in all doubtful cases.

[T.D. 74-227, 39 FR 32023, Sept. 4, 1974]

#### **§ 172.32 Limitation on time decision effective.**

A decision to cancel a claim for liquidated damages on condition that a stated amount be paid shall be effective for not more than 60 days from the date of notice to the parties of such decision, unless the decision itself prescribes a different effective period or the decision is later amended to change the effective period. If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full claim for liquidated damages shall be deemed applicable and, after required collection action, shall be promptly referred to the U.S. attorney unless other action has been directed by the Commissioner of Customs.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 79-160, 44 FR 31962, June 4, 1979]